

94TH CONGRESS
2D SESSION

H. R. 11656

[Report No. 94-880, Part I, Part II]

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 3, 1976

Ms. ABZUG (for herself, Mr. FASCELL, Mr. BROOKS, Mr. MOSS, Mr. MACDONALD of Massachusetts, Mr. MOORHEAD of Pennsylvania, Mr. ROSENTHAL, Mr. WRIGHT, Mr. FUQUA, Mr. CONYERS, Mr. JAMES V. STANTON, Ms. COLLINS of Illinois, Mr. JOHN L. BURTON, Mr. HARRINGTON, Mr. DRINAN, Mr. MEZVINSKY, Ms. JORDAN, Mr. EVANS of Indiana, Mr. MOFFETT, Mr. MAGUIRE, Mr. ASPIN, Mr. GUDE, Mr. MCCLOSKEY, Mr. STEELMAN, and Mr. PRITCHARD) introduced the following bill; which was referred to the Committee on Government Operations

MARCH 8, 1976

Reported with amendments, referred to the Committee on the Judiciary for a period ending not later than April 8, 1976, for consideration of such provisions of the bill as fall within the jurisdiction of that committee under rule X, clause (1) (m), and ordered to be printed

[Insert the part printed in italic]

APRIL 8, 1976

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Omit the part struck through and insert the part printed in boldface]

A BILL

To provide that meetings of Government agencies shall be open to the public, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That this Act may be cited as the "Government in the
- 4 Sunshine Act".

DECLARATION OF POLICY

SEC. 2. It is hereby declared to be the policy of the United States that the public is entitled to the fullest practicable information regarding the decisionmaking processes of the Federal Government. It is the purpose of this Act to provide the public with such information while protecting the rights of individuals and the ability of the Government to carry out its responsibilities.

OPEN MEETINGS

SEC. 3. (a) Title 5, United States Code, is amended by adding after section 552a the following new section:

“§ 552b. Open meetings

“(a) For purposes of this section—

“(1) the term ‘agency’ means the Federal Election Commission and any agency, as defined in section 552 (e) of this title, headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such position by the President with the advice and consent of the Senate, and includes any subdivision thereof authorized to act on behalf of the agency;

~~“(2) the term ‘meeting’ means the deliberations of at least the number of individual agency members required to take action on behalf of the agency where such~~

1 deliberations concern the joint conduct or disposition of
2 agency business; and

3 “(2) the term ‘meeting’ means an assembly or
4 simultaneous communication concerning the joint
5 conduct or disposition of agency business by two or
6 more, but at least the number of individual agency
7 members required to take action on behalf of the
8 agency, but does not include meetings required or
9 permitted by subsection (d); and

10 “(3) the term ‘member’ means an individual who
11 belongs to a collegial body heading an agency.

12 “(b)(1) Members as described in subsection (a)(2)
13 shall not jointly conduct or dispose of agency business
14 without complying with subsections (b) through (g).

15 ~~“(b)~~ (2) Except as provided in subsection (c), every
16 portion of every meeting of an agency shall be open to public
17 observation.

18 “(c) Except in a case where the agency finds that the
19 public interest requires otherwise, subsection (b) shall
20 not apply to any portion of an agency meeting and the
21 requirements of subsections (d) and (e) shall not apply to
22 any information pertaining to such meeting otherwise re-
23 quired by this section to be disclosed to the public, where the

1 agency properly determines that such portion or portions of
2 its meeting or the disclosure of such information is likely to—

3 “(1) disclose matters (A) specifically authorized
4 under criteria established by an Executive order to be
5 kept secret in the interests of national defense or foreign
6 policy and (B) in fact properly classified pursuant to
7 such Executive order;

8 “(2) relate solely to the internal personnel rules
9 and practices of an agency;

10 “(3) disclose information required **or permitted** to
11 be withheld from the public by any statute establishing
12 particular criteria or referring to particular types of in-
13 formation;

14 “(4) disclose trade secrets and commercial or finan-
15 cial information obtained from a person and privileged or
16 confidential;

17 “(5) involve accusing any person of a crime, or
18 formally censuring any person;

19 “(6) disclose information of a personal nature
20 where disclosure would constitute a clearly unwarranted
21 invasion of personal privacy;

22 “(7) disclose investigatory records compiled for
23 law enforcement purposes, **or information which if**
24 **written would be contained in such records**, but only
25 to the extent that the production of such records **or**

information would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;

“(8) disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

“(9) disclose information the premature disclosure of which would—

“(A) in the case of an agency which regulates currencies, securities, commodities, or financial institutions, be likely to (i) lead to significant financial speculation, or (ii) significantly endanger the stability of any financial institution; or

“(B) in the case of any agency, be likely to significantly frustrate implementation of a proposed

1 agency action, except that this subparagraph shall
 2 not apply in any instance ~~where~~ **after** the content
 3 or nature of the proposed agency action ~~already~~
 4 has been disclosed to the public by the agency, ~~or~~
 5 ~~where~~ **unless** the agency is required by law to make
 6 such disclosure prior to taking final agency action
 7 on such ~~proposal~~; **proposal, or after the agency**
 8 **publishes or serves a substantive rule pursuant**
 9 **to section 553(d) of this title; or**

10 “(10) specifically concern the agency’s issuance
 11 of a subpoena, or the agency’s participation in a civil
 12 action **or proceeding**, an action in a foreign court or
 13 international tribunal, or an arbitration, or the initiation,
 14 conduct, or disposition by the agency of a particular case
 15 of formal agency adjudication pursuant to the procedures
 16 in section 554 of this title or otherwise involving a
 17 determination on the record after opportunity for a
 18 hearing.

19 “(d) (1) Action under subsection (c) to close a por-
 20 tion or portions of an agency meeting shall be taken only
 21 when a majority of the entire membership of the agency
 22 votes to take such action. A separate vote of the agency
 23 members shall be taken with respect to each agency meeting
 24 a portion or portions of which are proposed to be closed to
 25 the public pursuant to subsection (c); ~~or with respect to any~~

1 ~~information which is proposed to be withheld under sub-~~
2 ~~section (e).~~ A single vote may be taken with respect to a
3 series of portions of meetings which are proposed to be
4 closed to the public, or with respect to any information con-
5 cerning such series, so long as each portion of a meeting
6 in such series involves the same particular matters, and is
7 scheduled to be held no more than thirty days after the
8 initial portion of a meeting in such series. The vote of each
9 agency member participating in such vote shall be recorded
10 and no proxies shall be allowed.

11 “(2) Whenever any person whose interests may be
12 directly affected by a portion of a meeting requests that the
13 agency close such portion to the public for any of the rea-
14 sons referred to in paragraph (5), (6), or (7) of subsec-
15 tion (c), the agency, upon request of any one of its members,
16 shall vote by recorded vote whether to close such meeting.

17 “(3) Within one day of any vote taken pursuant to
18 paragraph (1) or (2), the agency shall make publicly
19 available a written copy of such vote reflecting the vote of
20 each member on the question. If a portion of a meeting is
21 *to be* closed to the public, the agency shall, within one day
22 of the vote taken pursuant to paragraph (1) or (2) of this
23 subsection, make publicly available a full written explana-
24 tion of its action closing the portion together with a list of

1 all persons expected to attend the meeting and their
2 affiliation.

3 “(4) Any agency, a majority ~~of the portions~~ of whose
4 meetings may properly be closed to the public pursuant to
5 paragraph (4), (8), (9) (A), or (10) of subsection (c),
6 or any combination thereof, may provide by regulation for
7 the closing of such ~~portions~~ **meetings or portions thereof** in
8 the event that a majority of the members of the agency votes
9 by recorded vote at the beginning of such meeting, or por-
10 tion thereof, to close the exempt portion or portions of the
11 meeting, and a copy of such vote, reflecting the vote of each
12 member on the question, is made available to the public. The
13 provisions of paragraphs (1), (2), and (3) of this sub-
14 section and subsection (e) shall not apply to any portion of a
15 meeting to which such regulations apply: *Provided*, That the
16 agency shall, except to the extent that such information is
17 exempt from disclosure under the provisions of subsection
18 (c), provide the public with public announcement of the
19 date, place, and subject matter of the meeting and each por-
20 tion thereof at the earliest practicable time and in no case
21 later than the commencement of the meeting or portion in
22 question.

23 “(e) In the case of each meeting, the agency shall make
24 public announcement, at least one week before the meeting,
25 of the date, place, and subject matter of the meeting, whether

1 it is to be open or closed to the public, and the name and
2 phone number of the official designated by the agency to
3 respond to requests for information about the meeting. Such
4 announcement shall be made unless a majority of the mem-
5 bers of the agency determines by a recorded vote that agency
6 business requires that such meeting be called at an earlier
7 date, in which case the agency shall make public announce-
8 ment of the date, place, and subject matter of such meeting,
9 and whether open or closed to the public, at the earliest
10 practicable time and in no case later than the commence-
11 ment of the meeting or portion in question. The time, place,
12 or subject matter of a meeting, or the determination of the
13 agency to open or close a meeting, or portion of a meeting,
14 to the public, may be changed following the public announce-
15 ment required by this paragraph only if (1) a majority of
16 the entire membership of the agency determines by a re-
17 corded vote that agency business so requires and that no
18 earlier announcement of the change was possible, and (2)
19 the agency publicly announces such change and the vote
20 of each member upon such change at the earliest practicable
21 time and in no case later than the commencement of the
22 meeting or portion in question.

23 “(f) (1) A complete transcript or electronic recording
24 adequate to record fully the proceedings shall be made of each

1 meeting, or portion of a meeting, closed to the public, ex-
2 cept for a meeting, or portion of a meeting, closed to the
3 public pursuant to paragraph (10) of subsection (c). The
4 agency shall make promptly available to the public, in a
5 location easily accessible to the public, the complete transcript
6 or electronic recording of the discussion at such meeting of
7 any item on the agenda, or of the testimony of any witness
8 received at such meeting, except for such portion or portions
9 of such discussion or testimony as the agency, ~~by recorded~~
10 ~~vote taken subsequent to the meeting and promptly made~~
11 ~~available to the public,~~ determines to contain information
12 specified in paragraphs (1) through (10) of subsection (c).
13 ~~In place of each portion deleted from such a transcript or~~
14 ~~transcription the agency shall supply a written explanation~~
15 ~~of the reason for the deletion, and the portion of subsection~~
16 ~~(c) and any other statute said to permit the deletion.~~ Copies
17 of such transcript, or a transcription of such electronic re-
18 cording disclosing the identity of each speaker, shall be fur-
19 nished to any person at no greater than the actual cost of
20 duplication or transcription or, if in the public interest, at
21 no cost. The agency shall maintain a complete verbatim
22 copy of the transcript, or a complete electronic recording of
23 each meeting, or portion of a meeting, closed to the public,
24 for a period of at least two years after such meeting,
25 or until one year after the conclusion of any agency pro-

1 ceeding with respect to which the meeting, or a portion
2 thereof, was held, whichever occurs later.

3 “(2) Written minutes shall be made of any agency meet-
4 ing, or portion thereof, which is open to the public. The
5 agency shall make such minutes promptly available to the
6 public in a location easily accessible to the public, and shall
7 maintain such minutes for a period of at least two years after
8 such meeting. Copies of such minutes shall be furnished to
9 any person at no greater than the actual cost of duplication
10 thereof or, if in the public interest, at no cost.

11 “(g) Each agency subject to the requirements of this
12 section shall, within 180 days after the date of enactment
13 of this section, following consultation with the Office of the
14 Chairman of the Administrative Conference of the United
15 States and published notice in the Federal Register of at
16 least thirty days and opportunity for written comment by
17 any persons, promulgate regulations to implement the re-
18 quirements of subsections (b) through (f) of this section.
19 Any person may bring a proceeding in the United States
20 District Court for the District of Columbia to require an
21 agency to promulgate such regulations if such agency has
22 not promulgated such regulations within the time period
23 specified herein. Subject to any limitations of time therefor
24 provided by law, any person may bring a proceeding in
25 the United States Court of Appeals for the District of Colum-

1 bia to set aside agency regulations issued pursuant to this
2 subsection that are not in accord with the requirements of
3 subsections (b) through (f) of this section, and to require
4 the promulgation of regulations that are in accord with such
5 subsections.

6 “(h) The district courts of the United States have juris-
7 diction to enforce the requirements of subsections (b)
8 through (f) of this section. Such actions may be brought by
9 any person against an agency ~~or its members~~ prior to, or
10 within sixty days after, the meeting out of which the viola-
11 tion of this section arises, except that if public announce-
12 ment of such meeting is not initially provided by the
13 agency in accordance with the requirements of this section,
14 such action may be instituted pursuant to this section at any
15 time prior to sixty days after any public announcement of
16 such meeting. Such actions may be brought in the district
17 ~~wherein the plaintiff resides, or has his principal place of~~
18 ~~business,~~ **court of the United States for the district in**
19 **which the agency meeting is held, or in the District Court**
20 **for the District of Columbia,** or where the agency in
21 question has its headquarters. In such actions a defendant
22 shall serve his answer within twenty days after the service
23 of the complaint, but such time may be extended by the
24 court for up to twenty additional days upon a showing of
25 good cause therefor. The burden is on the defendant to

1 sustain his action. In deciding such cases the court may
2 examine in camera any portion of a transcript or electronic
3 recording of a meeting closed to the public, and may take
4 such additional evidence as it deems necessary. The court,
5 having due regard for orderly administration and the public
6 interest, as well as the interests of the party, may grant such
7 equitable relief as it deems appropriate, including granting
8 an injunction against future violations of this section, or
9 ordering the agency to make available to the public such
10 portion of the transcript or electronic recording of a meeting
11 as is not authorized to be withheld under subsection (c)
12 of this section. ~~Except to the extent provided in subsection~~
13 ~~(i) of this section, nothing~~ **Nothing** in this section confers
14 jurisdiction on any district court acting solely under this
15 subsection to set aside, enjoin or invalidate any agency
16 action taken or discussed at an agency meeting out of which
17 the violation of this section arose.

18 ~~“(i) Any Federal court otherwise authorized by law to~~
19 ~~review agency action may, at the application of any person~~
20 ~~properly participating in the judicial review proceeding, in-~~
21 ~~quire into violations by the agency of the requirements of this~~
22 ~~section and afford any such relief as it deems appropriate.~~

23 ~~“(j) (i)~~ (i) The court may assess against any party rea-
24 sonable attorney fees and other litigation costs reasonably

1 incurred by any other party who substantially prevails in
2 any action brought in accordance with the provisions of
3 subsection ~~(g)~~, ~~(h)~~, or ~~(i)~~ (g) or (h) of this section, except
4 that costs may be assessed against an individual member of
5 an agency only in the case where the court finds such agency
6 member has intentionally and repeatedly violated this sec-
7 tion and against the plaintiff only where the court finds
8 that the suit was initiated by the plaintiff primarily for
9 frivolous or dilatory purposes. In the case of assessment of
10 costs against an agency, the costs may be assessed by the
11 court against the United States.

12 “~~(k)~~ (j) Each agency subject to the requirements of this
13 section shall annually report to Congress regarding its com-
14 pliance with such requirements, including a tabulation of the
15 total number of agency meetings open to the public, the
16 total number of meetings closed to the public, the reasons
17 for closing such meetings, and a description of any litigation
18 brought against the agency under this section, including any
19 costs assessed against the agency in such litigation (whether
20 or not paid by the agency).

21 “~~(l)~~ (k) Except as specifically provided in this section,
22 nothing herein expands or limits the present rights of any
23 person under section 552 of this title, except that the pro-
24 visions of this Act shall govern in the case of any request

1 made pursuant to such section to copy or inspect the tran-
2 scripts or electronic recordings described in subsection (f)
3 of this section. The requirements of chapter 33 of title 44,
4 United States Code, shall not apply to the transcripts and
5 electronic recordings described in subsection (f) of this
6 section.

7 “~~(m)~~ (l) This section does not constitute authority to
8 withhold any information from Congress, and does not au-
9 thorize the closing of any agency meeting or portion thereof
10 otherwise required by law to be open.

11 “~~(n)~~ (m) Nothing in this section authorizes any
12 agency to withhold from any individual any record, includ-
13 ing transcripts or electronic recordings required by this Act,
14 which is otherwise accessible to such individual under sec-
15 tion 552a of this title.

16 “~~(o)~~ (n) In the event that any meeting is subject to the
17 provisions of the Federal Advisory Committee Act as well
18 as the provisions of this section, the provisions of this sec-
19 tion shall govern.”.

20 (b) The chapter analysis of chapter 5 of title 5, United
21 States Code, is amended by inserting:

“552b. Open meetings.”

22 immediately below:

“552a. Records about individuals.”.

EX PARTE COMMUNICATIONS

1

2 SEC. 4. (a) Section 557 of title 5, United States Code,
3 is amended by adding at the end thereof the following new
4 subsection:

5 “(d) (1) In any agency proceeding which is subject to
6 subsection (a) of this section, except to the extent required
7 for the disposition of ex parte matters as authorized by law—

8 “(A) no interested person outside the agency shall
9 make or cause to be made to any member of the body
10 comprising the agency, administrative law judge, or
11 other employee who is or may reasonably be expected
12 to be involved in the decisional process of the proceed-
13 ing, an ex parte communication relative to the merits
14 of the proceeding;

15 “(B) no member of the body comprising the agen-
16 cy, administrative law judge, or other employee who
17 is or may reasonably be expected to be involved in
18 the decisional process of the proceeding, shall make or
19 cause to be made to any interested person outside the
20 agency an ex parte communication relative to the merits
21 of the proceeding;

22 “(C) a member of the body comprising the agency,
23 administrative law judge, or other employee who is or
24 may reasonably be expected to be involved in the de-
25 cisional process of such proceeding who receives, or

1 who makes or causes to be made, a communication pro-
2 hibited by this subsection shall place on the public record
3 of the proceeding:

4 “(i) all such written communications;

5 “(ii) memoranda stating the substance of all
6 such oral communications; and

7 “(iii) all written responses, and memoranda
8 stating the substance of all oral responses, to the
9 materials described in clauses (i) and (ii) of this
10 subparagraph;

11 “(D) in the event of a communication prohibited
12 by this subsection and made or caused to be made by a
13 party *or interested person*, the agency, administrative
14 law judge, or other employee presiding at the hearing
15 may, to the extent consistent with the interests of justice
16 and the policy of the underlying statutes, require the
17 person or party to show cause why his claim or interest
18 in the proceeding should not be dismissed, denied, dis-
19 regarded, or otherwise adversely affected on account of
20 such violation; and

21 “(E) the prohibitions of this subsection shall apply
22 beginning at such time as the agency may designate,
23 but in no case shall they begin to apply later than the
24 time at which a proceeding is noticed for hearing unless
25 the person responsible for the communication has knowl-

1 edge that it will be noticed, in which case the prohibi-
2 tions shall apply beginning at the time of his acquisition
3 of such knowledge.

4 “(2) This section does not constitute authority to with-
5 hold information from Congress.”.

6 (b) Section 551 of title 5, United States Code, is
7 amended—

8 (1) by striking out “and” at the end of paragraph
9 (12) ;

10 (2) by striking out the “act.” at the end of para-
11 graph (13) and inserting in lieu thereof “act; and”;
12 and

13 (3) by adding at the end thereof the following new
14 paragraph:

15 “(14) ‘ex parte communication’ means an oral or
16 written communication not on the public record with
17 respect to which reasonable prior notice to all parties
18 is not given.”.

19 (c) Section 556 (d) of title 5, United States Code, is
20 amended by inserting between the third and fourth sentences
21 thereof the following new sentence: “The agency may, to
22 the extent consistent with the interests of justice and the
23 policy of the underlying statutes administered by the agency,
24 consider a violation of section 557 (d) of this title sufficient

1 grounds for a decision adverse to a person or party who has
2 committed such violation or caused such violation to occur.”.

3 CONFORMING AMENDMENTS

4 SEC. 5. (a) Section 410(b) (1) of title 39, United
5 States Code, is amended by inserting after “Section 552
6 (public information),” the words “section 552a (records
7 about individuals), section 552b (open meetings),”.

8 (b) Section 552(b) (3) of title 5, United States Code,
9 is amended to read as follows:

10 “(3) required **or permitted** to be withheld from
11 the public by any statute establishing particular criteria
12 or referring to particular types of information;”.

13 EFFECTIVE DATE

14 SEC. 6. (a) Except as provided in subsection (b) of
15 this section, the provisions of this Act shall take effect one
16 hundred and eighty days after the date of its enactment.

17 (b) Subsection (g) of section 552b of title 5, United
18 States Code, as added by section 3(a) of this Act, shall take
19 effect upon enactment.

94TH CONGRESS
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A BILL

To provide that meetings of Government agencies shall be open to the public, and for other purposes.

By Ms. ABZUG, Mr. FASCELL, Mr. BROOKS, Mr. MOSS, Mr. MACDONALD of Massachusetts, Mr. MOORHEAD of Pennsylvania, Mr. ROSENTHAL, Mr. WRIGHT, Mr. FUQUA, Mr. CONYEERS, Mr. JAMES V. STANTON, Ms. COLLINS of Illinois, Mr. JOHN L. BURTON, Mr. HARRINGTON, Mr. DRINAN, Mr. MEZVINSKY, Ms. JORDAN, Mr. EVANS of Indiana, Mr. MOFFETT, Mr. MAGUIRE, Mr. ASPIN, Mr. GUDE, Mr. McCLOSKEY, Mr. STEELMAN, and Mr. PRITCHARD

FEBRUARY 3, 1976

Referred to the Committee on Government Operations

MARCH 8, 1976

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APRIL 8, 1976

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed